

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
VIACOM INTERNATIONAL INC.)	NAL/Acct. No. 200532080002
)	File No. EB-04-IH-0341
)	FRN No. 0003475902
)	
COXCOM, INC.)	File No. EB-03-IH-0746
)	
Operator of a Cable Television System in San)	
Diego, California)	

ORDER

Adopted: October 20, 2004

Released: October 21, 2004

By the Chief, Enforcement Bureau:

1. The Enforcement Bureau has been investigating whether CoxCom, Inc. ("Cox"), operator of a cable television system in San Diego, California, aired commercial matter during children's programming, in willful and/or repeated violation of Section 76.225 of the Commission's rules.¹ The children's programming in question was provided to Cox, as well as to other cable operators and DBS providers nationwide, over the Nickelodeon Channel by Viacom International Inc. ("Viacom").

2. The Bureau and the above-captioned parties have negotiated the terms of a Consent Decree, a copy of which is attached hereto and incorporated by reference. After reviewing the terms of the Consent Decree, we find that the public interest would be served by approving the Consent Decree and terminating the captioned investigation involving Cox.

3. Accordingly, IT IS ORDERED, pursuant to Section 4(i) of the Communications Act of 1934, as amended,² that the attached Consent Decree IS ADOPTED.

4. IT IS FURTHER ORDERED that the above-captioned investigation IS TERMINATED.

FEDERAL COMMUNICATIONS COMMISSION

David H. Solomon
Chief, Enforcement Bureau

¹ 47 C.F.R. § 76.225

² 47 U.S.C. § 154(i).

CONSENT DECREE

1. The Enforcement Bureau of the Federal Communications Commission, Viacom International Inc. and CoxCom, Inc. hereby enter into this Consent Decree for the purpose of resolving and terminating that certain investigation currently being conducted by the Enforcement Bureau relating to possible violations of the Children's Programming Commercial Limits by CoxCom, Inc. d/b/a Cox Communications San Diego, and potential future investigations regarding similar possible violations by other Operators which also air Nickelodeon.

2. For purposes of this Consent Decree, the following definitions shall apply:

- (a) "Act" means the Communications Act of 1934, as amended, 47 U.S.C. § 151 *et seq.*
- (b) "Adopting Order" means an order of the Bureau, adopting this Consent Decree, without any modifications adverse to Viacom, Cox or other Operators.
- (c) "Air" means to send electronically any visual images and/or audible sounds to subscribers of a cable or direct broadcast satellite ("DBS") system.
- (d) "Any" shall be construed to include the word "all," and the word "all" shall be construed to include the word "any." Additionally, the word "or" shall be construed to include the word "and," and the word "and" shall be construed to include the word "or." The word "each" shall be construed to include the word "every," and the word "every" shall be construed to include the word "each."
- (e) "Bureau" means the FCC's Enforcement Bureau.
- (f) "Cable Operator" has the definition contained in 47 U.S.C. § 522(5).
- (g) "Children's Programming Commercial Limits" means the requirements contained in 47 U.S.C. § 303a and 47 C.F.R. §§ 25.701(e) and 76.225.
- (h) "Commercial Matter" and "Children's Programming" have the respective definitions contained in 47 C.F.R. §§ 25.701(e) and 76.225.
- (i) "Commission" or "FCC" means the Federal Communications Commission.
- (j) "Cox" means CoxCom, Inc. d/b/a Cox Communications San Diego, a Cable Operator in San Diego, California.
- (k) "Effective Date" means the date on which the Bureau releases the Adopting Order.
- (l) "Final Order" means that, with respect to the Adopting Order: (1) no request for stay or similar request is pending, no stay is in effect, the Adopting Order has not been vacated, reversed, set aside, annulled or suspended, and any deadline for filing such request that may be designated by statute or regulation has passed; (2) no timely petition for rehearing or reconsideration of the Adopting Order, or protest of any kind, is pending before the FCC and the time for filing any such petition or protest is passed; (3) the FCC does not have the Adopting Order under reconsideration or review on its own motion and the time for such reconsideration or review has passed; and (4) the Adopting Order is not

then under judicial review, there is no notice of appeal or other application for judicial review pending, and the deadline for filing such notice of appeal or other application for judicial review has passed.

- (m) “Inquiry” means the Bureau’s investigation of alleged violations of the Children’s Programming Commercial Limits by Cox that resulted in the Bureau’s letters of inquiry to Cox on June 16 and July 27, 2004, and to Viacom on August 10, 2004.
- (n) “Inquiry Period” means the period from October 1, 2003, through August 10, 2004.
- (o) “Nickelodeon” means The Nickelodeon Channel, a cable and satellite programming channel owned and operated by Nickelodeon, a division of MTV Networks, which is, in turn, a division of Viacom.
- (p) “Operator” means a provider of DBS service, as defined in 47 U.S.C. §§ 335(b)(5)(A), or a Cable Operator.
- (q) “Parties” means the Bureau, Viacom, and Cox collectively, and “Party” refers to the Bureau, Viacom, and Cox, individually.
- (r) “Viacom” means Viacom International Inc.

I. BACKGROUND

3. During the fourth calendar quarter of 2003, the Commission’s field offices conducted routine audits of certain Cable Operators and television broadcast licensees of the compliance by such entities with, respectively, the Children’s Programming Commercial Limits and the similar broadcast limits found in 47 C.F.R. § 73.670. Those audits identified, among other things, potential violations of the Children’s Programming Commercial Limits by Cox regarding programming on Nickelodeon aired on November 1 and 8, 2003. On June 16, 2004, the Bureau sent a letter of inquiry to Cox directing it to provide information regarding the potential violations and, on July 27, the Bureau sent a supplemental letter of inquiry to Cox. On August 10, the Bureau sent a related letter of inquiry to Viacom.

4. During the course of its preparation of its responses to these Bureau letters of inquiry, Cox requested Viacom to provide certain information. In response to the Bureau’s initial letter of inquiry, Cox also provided certifications from Nickelodeon and MTV Networks, which Cox represents to have maintained in its public files pursuant to the Commission’s rules. These certifications stated that the Nickelodeon programming at issue in the Bureau’s inquiry complied with the commercial limits set forth in 47 C.F.R. § 76.225 taking into account the one minute of insertion time allowed to distributors such as Cox. Subsequently, and in response to Cox’s request and the Bureau’s August 10 letter of inquiry, Viacom conducted extensive internal and external analysis to identify and quantify Commercial Matter that aired during Children’s Programming on Nickelodeon during the Inquiry Period. While Viacom made the certifications in the good faith belief that it was in compliance with the rules, this further analysis determined that, during that period, there were 591 instances in which Nickelodeon programs inadvertently contained Commercial Matter in excess of the minutes-per-hour limitations imposed by the Children’s Programming Commercial Limits, representing the equivalent of 1,021 30-second spots (collectively, the “Overages”). In addition, Viacom reported that, by its estimate, during the Inquiry Period, there were approximately 145 instances of programs aired in which commercials for products associated with the program were inadvertently aired

(collectively, the “Program Length Commercials”). Viacom’s analysis revealed that the Overages and Program Length Commercials resulted due to flawed internal procedures and human error. In the case of the Overages, Viacom received consideration or other benefits from the advertising that aired. Although it did not affect the number of apparent Overages, the analysis also found that Nickelodeon aired less Commercial Matter than the Commission’s rules allow in 85 percent of the hours examined in the Inquiry Period. In the case of the Program Length Commercials, the analysis revealed that the commercials were not sold with the understanding that Nickelodeon would air them in such related programs; the commercials aired in related programs due to the errors noted above. According to Viacom, this Nickelodeon programming was carried as part of a single national programming channel, not only by Cox over its various cable systems, but also by virtually all Operators that air the channel. These Operators collectively serve in excess of 85 million households throughout the country.

5. The Parties acknowledge that a consent decree to address the results of Viacom’s analysis is in the public interest. The Parties agree that any forfeiture proceeding that might result from a formal Bureau investigation into Cox or any other Operator’s compliance with the Children’s Programming Commercial Limits during Children’s Programming aired on Nickelodeon will be time-consuming and will require substantial expenditure of public and private resources. In order to conserve such resources, to resolve the Inquiry, and to promote compliance by Cox and other Operators with the Children’s Programming Commercial Limits, the Parties are entering into this Consent Decree, in consideration of the mutual commitments made herein.

II. AGREEMENT

6. The Parties agree that the provisions of this Consent Decree shall be subject to approval by the Bureau, by incorporation of such provisions by reference in an Adopting Order.

7. The Parties agree that this Consent Decree shall become effective on the date on which the Bureau releases the Adopting Order and shall remain in effect for two (2) years after the Effective Date. Upon release, the Adopting Order and this Consent Decree shall have the same force and effect as any other orders of the Commission, and any violation of the terms of this Consent Decree shall constitute a violation of a Commission order, entitling the Commission or the Bureau, pursuant to delegated authority, to exercise any rights and remedies attendant to the enforcement of a Commission order.

8. Viacom and Cox each acknowledges that the Commission has jurisdiction to enforce the Children’s Programming Commercial Limits against Operator carriage of network programming. Nothing herein constitutes a waiver of any legal rights to challenge, outside of the context of this proceeding, the underlying validity of the Children’s Programming Commercial Limits, including whether the rules are consistent with the Children’s Television Act of 1990.

9. As part of the Adopting Order, the Bureau shall terminate the Inquiry. From and after the Effective Date, in the absence of the discovery of material new information not previously disclosed to the Bureau by Viacom, the Bureau shall not, either on its own motion or in response to any petition, third-party objection, complaint, or other information, initiate any inquiries, investigations, forfeiture proceedings, hearings, or other actions, formal or informal, against Viacom, Cox or any other Operator for alleged violations of the Children’s Programming

Commercial Limits with respect to Commercial Matter aired during Children's Programming on Nickelodeon prior to the Effective Date. The Bureau shall not use the underlying facts or conduct relating to any of the foregoing for any purpose relating to Viacom, Cox or any other Operator that carried Nickelodeon prior to the Effective Date, and shall treat all such matters as null and void for all purposes.

10. Viacom represents that it has adopted, is currently in the process of implementing, and agrees to abide by a compliance plan (the "Compliance Plan") for the purpose of preventing the airing of Commercial Matter violative of the Children's Programming Commercial Limits. A summary of that plan is set forth in the Attachment hereto. Viacom agrees, to the extent it has not already done so, to implement this Compliance Plan within thirty (30) days of the Effective Date and to keep such Compliance Plan in effect, where applicable, for two (2) years after the Effective Date. With the exception of Paragraphs 4 and 5 of the Compliance Plan, which Viacom may not change without the Bureau's prior written consent, Viacom reserves the right to revise the Compliance Plan from time to time, provided that, during the term of this Consent Decree, the Bureau shall be given not less than thirty (30) days advance written notice of any material revisions to the Compliance Plan.

11. The Parties agree that retaining the audit results in cable systems' public inspection files is consistent with the Commission's rules. Accordingly, Cox agrees to timely place and retain for a period of at least one year the inspection results made available by Viacom pursuant to the Compliance Plan in the public inspection files maintained by its cable systems, including any cable systems operated by any of its parent, affiliated or subsidiary companies, in a manner otherwise in accordance with 47 C.F.R. §76.1703.

12. Within five (5) business days after the Adopting Order becomes a Final Order, without any modifications to this Consent Decree adverse to Viacom, Cox or any other Operator that carried Nickelodeon prior to the Effective Date, Viacom shall make a voluntary contribution to the United States Treasury in the amount of One Million Dollars (\$1,000,000). The payment must be made by check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the Acct. No. and FRN No. referenced above. Payment by check or money order may be mailed to Forfeiture Collection Section, Finance Branch, Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. Payment by overnight mail may be sent to Bank One/LB 73482, 525 West Monroe, 8th Floor Mailroom, Chicago, Illinois 60661. Payment by wire transfer may be made to ABA Number 071000013, receiving bank Bank One, and account number 1165259. With the exception, pursuant to Paragraph 9 hereof, of any action taken as the result of the Commission's discovery of material new information not previously disclosed to it, the Bureau agrees not to seek any further voluntary or involuntary contributions or payments from Viacom, Cox, or any other Operator to the United States Treasury for alleged violations of the Children's Programming Commercial Limits with respect to Commercial Matter aired during Children's Programming on Nickelodeon prior to the Effective Date.

13. With regard to each Nickelodeon program aired during the Inquiry Period that contained an Overage, Viacom shall reduce the amount of Commercial Matter aired during the same or a similar Nickelodeon program during the same or a comparable time period in an amount equal to the amount of time of such excess Commercial Matter, up to the equivalent of 1,021 30-second spots, the estimated total of the Overages. All such airings will occur within ten

(10) months of the Effective Date. In the event of any reduction or elimination by Viacom of Commercial Matter from its programming pursuant to this Paragraph 13, Viacom shall direct each Operator to not insert Commercial Matter in the program in excess of that allowed pursuant to the agreement between such Operator and Viacom and the Children's Programming Commercial Limits, had such reduction or elimination not been made.

14. Viacom and Cox each waives any and all rights it may have, individually or together, to seek administrative or judicial reconsideration, review, appeal or stay, or to otherwise challenge or contest the validity of this Consent Decree and the Adopting Order, provided no modifications are made to the Consent Decree adverse to Viacom, Cox or any other Operator that carried Nickelodeon prior to the Effective Date. If the Bureau, the Commission or the United States acting on its behalf, brings a judicial action to enforce the terms of the Adopting Order or this Consent Decree, or both, Viacom and Cox will not contest the validity of this Consent Decree or of the Adopting Order. If Viacom or Cox brings a judicial action to enforce the terms of the Adopting Order or this Consent Decree, or both, neither the Commission nor the United States will contest the validity of this Consent Decree or of the Adopting Order. Viacom and Cox retain the right to challenge the Bureau or the Commission's interpretation of this Consent Decree or interpretation of any terms contained therein. Any collection action by the Commission or any other governmental entity to obtain the payment of the voluntary contribution to the United States Treasury provided for in Paragraph 12 of this Consent Decree shall be maintained solely against Viacom. Nothing herein shall restrict Viacom or Cox from challenging on any basis, any future enforcement action relating to the Children's Programming Commercial Limits, other than actions to enforce the Adopting Order or this Consent Decree.

15. The Parties agree that this Consent Decree and Viacom's voluntary contribution are for settlement purposes only and do not constitute, including for the purpose of completing any existing Commission form or otherwise, an admission, denial, adverse finding, adverse final action, adverse adjudication on the merits, or waiver of legal rights except as otherwise expressly set forth herein, including without limitation the rights reserved in Paragraph 8 hereof, or a factual or legal determination regarding any compliance or noncompliance by Viacom, Cox, or any other Operator that carried Nickelodeon prior to the Effective Date, with the Children's Programming Commercial Limits.

16. In the event that this Consent Decree is rendered invalid in any court of competent jurisdiction, it shall become null and void and may not be used in any manner in any legal proceeding.

17. Viacom and Cox each hereby agrees to waive any claims they may otherwise have under the Equal Access to Justice Act, 5 U.S.C. § 504 and 47 C.F.R. § 1.1501 *et seq.*, relating to the matters addressed in this Consent Decree.

18. Each Party represents and warrants to the other that it has full power and authority to enter into this Consent Decree.

19. This Consent Decree may be executed in counterparts.

**FEDERAL COMMUNICATIONS COMMISSION
ENFORCEMENT BUREAU**

By: _____
David H. Solomon, Chief
Date: _____

VIACOM INTERNATIONAL INC.

By: _____
Mark Morril, Vice President, Deputy General Counsel and Assistant
Secretary
Date: _____

COXCOM, INC.

By: _____
James A. Hatcher, Director
Date: _____

ATTACHMENT**COMPLIANCE PLAN OF NICKELODEON**

Nickelodeon has adopted, and is implementing, a Compliance Plan for the purpose of preventing the airing of Commercial Matter that is violative of the Children's Programming Commercial Limits. This Compliance Plan consists of the following five components:

1. Nickelodeon will conduct formal training on the Children's Programming Commercial Limits for all Nickelodeon employees in the traffic department who materially participate in scheduling commercials during Children's Programming. Such training will be provided to all such employees no later than thirty (30) days after the Effective Date of this Consent Decree, and on an annual basis thereafter while this Compliance Plan remains in effect. Training also will be provided to all such new employees promptly after they commence their duties. Such training shall include instruction relating to not only the fixed time limits on Commercial Matter during Children's Programming, but also to program-length commercial issues arising from tie-ins between program content and characters, and host-selling.

2. Nickelodeon will assign responsibilities for ensuring compliance with the Children's Programming Commercial Limits to additional personnel. Before Children's Programming airs on Nickelodeon, standards and practices personnel will review the content of each commercial within each instance of Children's Programming to ensure compliance with the Children's Programming Commercial Limits. In addition, Nickelodeon's traffic department will be responsible for regularly reviewing the daily Children's Programming schedule, including a listing of all commercials scheduled during such programming. Finally, Nickelodeon personnel responsible for scheduling commercials during Children's Programming aired on Nickelodeon will be required to approve a task list each day confirming that they have performed quality control checks intended to ensure compliance with the Children's Programming Commercial Limits.

3. Nickelodeon has made modifications to the computer system it uses to schedule Commercial Matter designed to minimize the potential for human error in the commercial scheduling process and to ensure compliance with the Children's Programming Commercial Limits. In the future, as it deems appropriate, Nickelodeon will seek to make further improvements to the computer system, including upgrades to the existing system or the possible migration to a new computer system.

4. For two (2) years after the Effective Date, Nickelodeon will conduct random inspections, at least once every six (6) months, of Commercial Matter aired during Children's Programming. Each inspection will consist of reviewing, in the official program logs of Nickelodeon, all Commercial Matter aired during Children's Programming on Nickelodeon during a randomly selected three-week period during the preceding six (6) months. Within thirty (30) days of the completion of each such inspection, Nickelodeon will report in writing to the Bureau the results of the inspection, including any violations of the Children's Programming Commercial Limits discovered during the period reviewed and the remedial steps taken to ensure future compliance with the Children's Programming Commercial Limits. Nickelodeon will make the results of such inspections available to Operators that air Nickelodeon on the same Internet web site on which it periodically provides such Operators with certifications regarding

the compliance of Nickelodeon programming with the Children's Programming Commercial Limits. Nickelodeon has placed a notice on that web site advising all such Operators that it will be conducting such inspections and that it will make the results of each such inspections available to them on that web site for their review and placement in their respective system public inspection files. Nickelodeon will also deliver a hard copy of such audit results via facsimile or mail to Cox at the following address: CoxCom, Inc., 1400 Lake Hearn Drive, N.E., Atlanta, Georgia 30319, Attn: James A. Hatcher, Esquire, Telecopier: (404) 843-5845.

5. For the two-year period that this Compliance Plan remains in effect, in the event that Nickelodeon's inspection required under Paragraph 4 reveals that the amount of Commercial Matter aired during a Nickelodeon program exceeded the Children's Programming Commercial Limits, for each such instance, Nickelodeon will reduce the amount of Commercial Matter to be aired during a single subsequent airing of the same or similar Nickelodeon program during the same or a comparable time period in an amount equal to the amount of time of such excess Commercial Matter. Such subsequent airing will occur within sixty (60) days of submission of the inspection results to the Bureau reporting the discovery of such excess Commercial Matter. For the two-year period that this Compliance Plan remains in effect, in the event Nickelodeon's inspection reveals the airing of a Nickelodeon program associated with a product in which a commercial for that product was aired during such program, for each such instance, Nickelodeon will air subsequently the same or similar Nickelodeon program during the same or a comparable time period without any Commercial Matter. Such subsequent airing will occur within sixty (60) days of the submission of the inspection results to the Bureau reporting the discovery of the airing of the Nickelodeon program associated with a product in which a commercial for that product was aired. In the event of the reduction or elimination of Commercial Matter from its programming pursuant to this Paragraph 5, Nickelodeon will not authorize any Operator to insert Commercial Matter in the program in excess of that allowed pursuant to the agreement between such Operator and Nickelodeon and the Children's Programming Commercial Limits, had such reduction or elimination not been made.